



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

50

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,197	12/28/2001	Sanchaita Datta	3003.2.9A	7746

7590 06/17/2005

John W. L. Ogilvie
THORPE NORTH & WESTERN, LLP
P.O. Box 1219
Sandy, UT 84091-1219

EXAMINER

NGUYEN, THU HA T

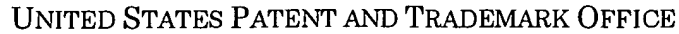
ART UNIT PAPER NUMBER

2155

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Technology Center 2100



(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that dependent claims 2-12, 14-18, and 20-21 stand or fall together with independent claims 1, 13, and 19, respectively.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

U.S. Pat. No. 5,948,069	Kitai et al	September 07, 1999
U.S. Pat. No. 6,209,039	Albright et al	March 27, 2001
U.S. Pat. No. 5,910,951	Pearce et al	June 08, 1999
U.S. Pat. No. 6,546,423	Dutta et al	April 08, 2003
U.S. Pat. No. 6,195,680	Goldszmidt et al	February 27, 2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-21 are rejected under 35 U.S.C. 103.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 8-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over **Kitai et al.**, (hereinafter Kitai) U.S. Patent No. **5,948,069**, in view of **Albright et al.** (hereinafter Albright) U.S. Patent No. **6,209,039**.

3. As to claim 1, **Kitai** teaches the invention as claimed, including a controller which controls access to multiple independent networks in a parallel network configuration, the controller comprising:

a site interface connecting the controller to a site (abstract, figures 3, 7, 15, 22, 24, elements 3005, 3006);

a packet path selector which selects between network interfaces according to a specified criterion (abstract, figures 3, 7, 15, col. 7, lines 44-55, col. 8, lines 14-25, col. 9, lines 22-33, col. 12, lines 66-col. 13, lines 3);

wherein the controller receives a packet through the site interface (abstract, figures 3, 7, 15, 22, col. 2 lines 48-col. 3 lines 42, col. 5 lines 29-57).

However, **Kitai** does not explicitly teach at least two private network interfaces, a packet path selector which selects between private network interfaces and sends the packet through the private network interface that was selected by the packet path selector. **Albright** teaches at least two private network interfaces (figure 3, elements 310, 314), a packet path selector (figure 3, processors 204, 306) a packet path selector which selects between private network interfaces (figure 3, interface 310, 314, col. 5, lines 65-col. 6, lines 21, lines 39-51 [processor selects links/frame relay interface between links/frame relay interfaces]) and sends the packet through the private network interface that was selected by the packet path selector (col. 5, lines 24-35, col. 6, lines 22-38, col. 7, lines 17-25). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai** and **Albright** to include a packet path selector which selects between private network interfaces and sends the packet through the private network interface that was selected by the packet path selector because it would provide an efficient communications

Art Unit: 2155

system that the data can be dynamically monitored and routed among links/paths in order to reduce the congestion or failure within the networks (col. 2, lines 15-25).

4. As to claim 2, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches wherein the controller control access to multiple independent frame relay networks, and each of the at least two private network interfaces comprises a frame relay network interface (figure 3, col. 6, lines 65-col. 7, lines 3). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai** and **Albright** to have the private network interfaces comprises a frame relay network interface because it would provide an efficient communications system that the selection of frame relay network interfaces may vary and dynamically depending on traffic load, failure of links/paths and so on. The system will quickly establish/select another path/link to maintain the levels of service guarantee to subscribers.

5. As to claim 3, **Kitai** teaches the invention as claimed, wherein the packet path selector selects between network interfaces according to a load-balancing criterion, thereby promoting balanced loads on devices that carry packets after the packets leave the selected network interfaces (abstract, figures 9, 19, col. 8 lines 13-25, col. 14 lines 62-col. 15 lines 8, col. 20 lines 1-col. 21 lines 59). However, **Kitai** does not explicitly teach private network interfaces. **Albright** teaches private network interfaces (figure 3). It would have been obvious to one of ordinary skill in the Data Processing art

Art Unit: 2155

at the time of the invention to combine the teachings of **Kitai and Albright** to include private network interfaces because it would provide an efficient communications system that the selection of private network interfaces may vary and dynamically depending on traffic load, failure of links/paths and so on. The system will quickly establish/select another path/link to maintain the levels of service guarantee to subscribers.

6. As to claim 8, **Kitai** teaches the invention as claimed, wherein the controller comprises at least three network interfaces, each of which is selectable by the packet path selector (abstract, figures 3, 7, 15, 22, col. 2 lines 48-col. 3 lines 42, col. 5 lines 29-57). **Kitai** does not explicitly teach frame relay network interfaces; however, **Albright** teaches frame relay network interfaces (col. 6, lines 64-col. 7, lines 3). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai and Albright** to include frame relay network interfaces because it would provide an efficient communications system that the selection of frame relay network interfaces may vary and dynamically depending on traffic load, failure of links/paths and so on. The system will quickly establish/select another path/link to maintain the levels of service guarantee to subscribers.

7. As to claim 9, **Kitai** teaches the invention as claimed, wherein the controller operates in a system providing at least one point-to-point connection (col. 10 lines 50-65. col. 16 lines 8-23, col. 17 lines 1-10).

8. As to claim 10, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches wherein the controller operates in a system providing connectivity over at least two frame relay networks from at least two carriers, each frame relay network operating on its own clock which is different from the clock of the other frame relay network (abstract, figures 2-3, 7, col. 10 lines 36-col. 11 lines 9, col. 13 lines 27-52). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai and Albright** to have at least two frame relay networks from at least two carriers, each frame relay network operating on its own clock which is different from the clock of the other frame relay network because it would have an efficient communications system that provides a number of point-to-point channels with different carriers and clocks through multiplexing network to improve network traffic and failure.

9. As to claim 11, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches wherein each private network interface is an indirect interface tailored to a particular type of frame relay network (figure 3, col. 7, lines 6-16). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai and Albright** to have the process of each private network interface is an indirect interface tailored to a particular type of frame relay network because it would have an efficient communication system to control and select the reliability and dynamically interface/paths among multiple interfaces/paths.

10. As to claim 12, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches wherein each private network interface is a direct interface comprising an Ethernet card (col. 13 lines 38-52). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai and Albright** to have each private network interface is a direct interface comprising an Ethernet card because it would have an efficient communications system that provide Ethernet card to improve private network security, traffic and failure.

11. Claims 4, 13-16 and 18 are rejected under 35 U.S.C. §103 (a) as being unpatentable over **Kitai** U.S. Patent No. **5,948,069**, **Albright et al.** (hereinafter Albright) U.S. Patent No. 6,209,039, in view of **Pearce et al.**, (hereinafter Pearce) U.S Patent No. **5,910,951**.

12. As to claim 4, **Kitai** does not teach the invention as claimed; however, **Albright** teaches private network interfaces (figure 3, col. 6, lines 65-col. 7, lines 3). **Pearce** teaches wherein the packet path selector selects between network interfaces according to a reliability criterion thereby promoting use of devices that will still carry packets alter the packets leave the selected network interfaces, when other devices that could have been selected are not functioning (abstract, col. 2 lines 51-col. 3 lines 12). It would have been obvious to one of ordinary skill in the Data Processing art at the time

of the invention to combine the teachings of **Kitai, Albright and Pearce** to include private network interfaces and selector to select paths/interfaces according to a reliability criterion because it would have an efficient communication system to control and select the reliable, qualifiable network/interface/path among multiple networks/interfaces/paths.

13. As to claim 13, **Kitai** teaches the invention as claimed, including a method for combining connections for access to multiple parallel networks, the method comprising the steps of:

obtaining a controller, the controller comprising a site interface, and a packet path selector which selects between network interfaces according to a specified criterion (abstract, figures 3, 7, 15, 22, 24, col. 5 lines 29-63);

connecting the controller site interface to a site to receive packets from a computer at the site (abstract, figures 3, 7, 15, 22, col. 2 lines 48-col. 3 lines 42, col. 5 lines 29-57);

connecting a first network interface of the controller to a first network (abstract, figures 3, 7);

sending a packet to the site interface which then sends the packet through a network interface selected by the packet path selector (abstract, figures 3, 7, 15, 22, col. 2 lines 48-col. 3 lines 42, col. 5 lines 29-57).

However, **Kitai** does not explicitly teach at least two private network interfaces, a packet path selector which selects between private network interfaces, then sends the

packet through a private network interface selected by the packet path selector and connecting a second private network interface of the controller to a second private network which is parallel to and independent of the first private network.

Pearce teaches connecting a second private network interface of the controller to a second private network which is parallel to and independent of the first private network (abstract, figures 1, 5, col. 1 lines 47-col. 2 lines 60).

Albright teaches at least two private network interfaces (figure 3, elements 310, 314), a packet path selector (figure 3, processors 204, 306), a packet path selector which selects between private network interfaces (figure 3, interface 310, 314, col. 5, lines 65-col. 6, lines 21, lines 39-51 [processor selects links/frame relay interface between links/frame relay interfaces]), then sends the packet through a private network interface selected by the packet path selector (col. 5, lines 24-35, col. 6, lines 22-38, col. 7, lines 17-25). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine features **Pearce and Albright** into **Kitai** because it would provide an efficient communications system that the data can be dynamically monitored and routed among links/paths in order to reduce the congestion or failure within the networks (col. 2, lines 15-25).

14. As to claim 14, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches wherein the private networks are frame relay networks (figure 3, col. 6, lines 65-col. 7, lines 3). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of

Kitai and Albright to have the private network interfaces comprises a frame relay network interface because it would provide an efficient communications system that the selection of frame relay network interfaces may vary and dynamically depending on traffic load, failure of links/paths and so on. The system will quickly establish/select another path/link to maintain the levels of service guarantee to subscribers.

15. As to claim 15, **Kitai** teaches the invention as claimed, further comprising the step of specifying the criterion for use by the packet path selector, wherein the specified criterion-is a load balancing criterion (abstract, figures 9, 19, col. 8 lines 13-25, col. 14 lines 62-col. 15 lines 8, col. 20 lines 1-col. 21 lines 59).

16. As to claim 16, **Kitai** does not explicitly teach the invention as claimed; however, **Pearce** teaches the step of specifying the criterion for use by the packet path selector, wherein the specified criterion is a reliability criterion (abstract, col. 2 lines 51-col. 3 lines 12). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai, Albright and Pearce** to include private network interfaces and selector to select paths/interfaces according to a reliability criterion because it would have an efficient communication system to control and select the reliable, qualifiable network/interface/path among multiple networks/interfaces/paths.

17. As to claim 18, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches wherein at least one of the steps connecting a private network interface of the controller connects the controller to a User-to-Network Interface in a router of a frame relay network (abstract, figure1). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai and Albright** to have a the controller connects the controller to a User-to-Network Interface in a router of a frame relay network because it would improve private network security, traffic and failure.

18. Claim 5 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over **Kitai, Albright**, in view of **Dutta et al.**, (hereinafter Dutta) U.S Patent No. **6,546,423**.

19. As to claim 5, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches private networks (figure 3, col. 6, lines 65-col. 7, lines 3). **Dutta** teaches wherein specifying the criterion for use by the packet path selector, wherein the specified criterion is a security criterion, thereby promoting use of multiple networks to carry different pieces of a given message so that unauthorized interception of packets on fewer than all of the networks used to carry the message will not provide the total content of the message (abstract, figures 1-2, col. 1 lines 29-64, col. 5 lines 31-54). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai, Albright and Dutta** to have private networks and the packet path selector selects between network interfaces

Art Unit: 2155

according to a security criterion because it would improve the data transferring more secure and efficient between networks.

20. Claim 17 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over **Kitai, Albright, Pearce**, in view of **Dutta et al.**, (hereinafter Dutta) U.S Patent No. **6,546,423**.

21. As to claim 17, **Kitai, Albright and Pearce** do not explicitly teach the invention as claimed; however, **Dutta** teaches the step of specifying the criterion for use by the packet path selector, wherein the specified criterion is a security criterion (abstract, figures 1-2, col. 1 lines 29-64, col. 5 lines 31-54). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai, Albright, Pearce and Dutta** to have the packet path selector selects between private network interfaces according to a security criterion because it would improve the data transferring more secure and efficient.

22. Claims 6-7 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over **Kitai**, and **Albright**, in view of **Goldszmidt et al.**, (hereinafter Goldszmidt) U.S Patent No. **6,195,680**.

23. As to claim 6, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches private networks (figure 3, col. 6, lines 65-col. 7, lines 3).

Art Unit: 2155

Goldszmidt teaches wherein the controller sends packets out of sequence over the parallel networks (abstract, figures 3, 5, col. 14, lines 20-60). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai**, **Albright** and **Goldszmidt** to have the private networks and the controller sends packets out of sequence order because would have an efficient communication system to process, control and monitor the delivery of packet to control the traffic load.

24. As to claim 7, **Kitai** and **Albright** do not explicitly teach the invention as claimed; however, **Goldszmidt** teaches wherein the controller places an encrypted sequence number in at least some of the packets which are sent out of sequence (abstract, figure 7, col. 1 lines 45-col. 2 lines 18, col. 15 lines 14-43). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai** and **Goldszmidt** to have the controller places an encrypted sequence number in at least some of the packets which are sent out of sequence because would have an efficient communication system to encrypt packet to improve its tolerance to error, lost and secure.

25. Claim 19 is rejected under 35 U.S.C. §103 (a) as being unpatentable over **Kitai**, and **Pearce** U.S. Patent No. **5,910,951**, in view of **Goldszmidt** U.S Patent No. **6,195,680**.

26. As to claim 19, **Kitai** teaches the invention as claimed, including a method for combining connections for access to multiple independent parallel networks, the method comprising the steps of:

sending a packet to a site interface of a controller, the controller comprising the site interface which receives packets, at least two network interfaces, and a packet path selector which selects between network interfaces according to a specified criterion; and specifying the criterion for use by the packet path selector, wherein the specified criterion is load balancing (abstract, figures 3, 7, 9, 15, 19, 22, 24, col. 2 lines 48-col. 3 lines 42, col. 5 lines 29-63, col. 8 lines 13-25, col. 14 lines 62-col. 15 lines 8, col. 20 lines 1-col. 21 lines 59).

However, **Kitai** does not explicitly teach wherein the specified criterion is one of: reliability criterion, a security criterion.

Pearce teaches the specified criterion is reliability criterion (abstract, col. 2 lines 51-col. 3 lines 12).

Goldszmidt teaches the specified criterion is a security criterion (abstract, figures 1-2, col. 1 lines 29-64, col. 5 lines 31-54). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai**, **Pearce** and **Goldszmidt** to specified criterion is one of reliability and security because it would have an efficient communication system to control, select and transfer data over the reliability, qualification and security network amongst multiple networks.

27. Claims 20-21 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over **Kitai, Pearce and Goldszmidt**, in view of **Albright et al.** (hereinafter **Albright**) U.S. Patent No. **6,209,039**.

28. As to claim 20, **Kitai** teaches the invention as claimed, wherein the step of sending a packet to the controller site interface is repeated as multiple packets are sent, and the controller sends different packets of a given message to different networks (abstract, col. 3 lines 6-42). **Kitai** does not explicitly teach frame relay networks. However, **Albright** teaches frame relay networks (figure 3, col. 6, lines 65-col. 7, lines 3). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of **Kitai and Albright** to include frame relay networks because it would provide an efficient communications system that the selection of frame relay network interfaces may vary and dynamically depending on traffic load, failure of links/paths and so on. The system will quickly establish/select another path/link to maintain the levels of service guarantee to subscribers.

29. As to claim 21, **Kitai** does not explicitly teach the invention as claimed; however, **Albright** teaches frame relay networks (figure 3, col. 6, lines 65-col. 7, lines 3). **Pearce** teaches the step of sensing failure of one of the parallel networks and automatically sending traffic through at least one other parallel network (abstract, col. 2 lines 50-col. 3 lines 12, col. 5 lines 33-63). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the

teachings of **Kitai, Pearce and Albright** to include frame relay networks and the step of sensing failure of one of the parallel networks and automatically sending traffic through at least one other parallel network because it would detect and improve network security, traffic and failure.

(11) Response to Argument

(A) A local area network, as disclosed in Kitai, is not a “private network” and also appellant refers back to original Appeal Brief for “private network” issue.

As to point (A), examiner disagrees with appellant’s argument since the examiner reopened the Office action with new ground of rejection.

(B) Claims 9 and 15 were not properly rejected under section 103 in view of Kitai. Kitai fails to teach private networks.

As to point (B), before addressing the argument, the examiner submits that in the Reopening Office Action in paragraphs 5 and 16 (as independent claims 1 and 13) the examiner stated that the primary reference Kitai teaches a site interface connecting...; a packet path selector which selects...; a controller receives a packet... However, Kitai does not explicitly teach private network interface (see the Reopening Office Action paragraphs 5, and 16 dated 12/23/04). Claim 9 depends on claim 1, recited point-to-point connection and claim 15 depends on independent claim 13, recited the specified criterion is a load balancing criterion as disclosed in Kitai reference (see the Reopening Office Action paragraphs 9 and 18). There is nothing mentioned about private network

Art Unit: 2155

interface in claims 9 and 15. Therefore, only Kitai as a primary reference can properly rejected claims 9 and 15.

(C) Claims 1-3, 8, 10-12, 14, 18 and 20 were not properly rejected under section 103 in view of Kitai combined with Albright. The Reopening Office Action fails to establish the necessary suggestion or motivation in the art for combining theses references.

As to point (C), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reason to incorporate at least two private network interfaces, a packet path selector which selects between private network interfaces and sends the packet through the private network interface that was selected by the packet path selector, as disclosed by Albright into system of Kitai because it were conventionally employed in the art to provide an efficient communications system that the data can be dynamically monitored and routed among links/paths in order to reduce the congestion or failure within the networks (see Albright col. 2, lines 15-25).

Appellant argues the combination fails to teach the claimed parallel network, because Albright teaches serial network rather than teaching parallel network.

Examiner asserts that Kitai teaches parallel network (see Kitai col. 2, lines 48-54) and moreover, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(D) Claims 4, 13, 16, and 21 were not properly rejected under section 103 in view of Kitai combined with Albright and Pearce. The rejection fails to suggest or motivation of combination of references.

As to point (D), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reason to incorporate a selector to select paths/interfaces according to a reliability criterion, as disclosed by Pearce into Kitai and Albright system because it would have conventionally employed in the art to have an efficient communication system to control

and select the reliable, qualifiable network/interface/path among multiple networks/interfaces/paths (see Pearce col. 2, lines 24-30, col. 2, line 61-col. 3, line 5).

(E) Claim 5 was not properly rejected under section 103 in view of Kitai combined with Albright and Dutta. The rejection fails to suggestion or motivation to combine the references.

As to point (E), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reason to incorporate the specified criterion is a security criterion, as disclosed by Dutta into Kitai and Albright system because it were conventionally employed in the art to provide an efficient system to improve the data transferring more secure and efficient between networks (see Dutta col. 1, lines 4-52, col. 2, lines 14-16).

(F) Claim 17 was not properly rejected under section 103 in view of Kitai combined with Albright, Pearce and Dutta. The rejection fails to suggestion or motivation to combine the references.

As to point (F), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reason to incorporate the specified criterion is a security criterion, as disclosed by Dutta into Kitai and Albright and Pearce system because it were conventionally employed in the art to provide an efficient system to improve the data transferring more secure and efficient between networks (see Dutta col. 1, lines 4-52, col. 2, lines 14-16).

(G) Claims 6 and 7 were not properly rejected under section 103 in view of Kitai combined with Albright and Goldszmidt. The rejection fails to suggest or motivation to combine the references.

As to point (G), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

the reason to incorporate the feature of sending packets out of sequence, as disclosed by Goldszmidt into Kitai and Albright system because it were conventionally employed in the art to provide an efficient system to process, control and monitor the delivery of packet to control the traffic load (see Goldszmidt col. 2, lines 55-62, col. 3, lines 12-15).

(H) Claim 5 was not properly rejected under section 103 in view of Kitai combined with Albright and Dutta. The rejection fails to suggestion or motivation to combine the references.

As to point (H), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reason to incorporate the specified criterion is a security criterion, as disclosed by Dutta into Kitai and Albright system because it were conventionally employed in the art to provide an efficient system to improve the data transferring more secure and efficient between networks (see Dutta col. 1, lines 4-52, col. 2, lines 14-16).

(I) Claim 19 was not properly rejected under section 103 in view of Kitai combined with Pearce and Goldszmidt. The rejection fails to suggestion or motivation to combine the references.

As to point (I), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reason to incorporate the specified criterion is a reliability and security criterion, as disclosed by Pearce and Goldszmidt into Kitai system because it would have conventionally employed in the art to have an efficient communication system to control and select the reliable, qualifiable network/interface/path among multiple networks/interfaces/paths (see Pearce col. 2, lines 24-30, col. 2, line 61-col. 3, line 5).

Examiner has considered all of applicant's arguments.

The ultimate determination of patentability must be based on consideration of the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The submission of objective evidence of patentability does not mandate a conclusion of patentability in and of itself. *In re Chupp*,

816 F.2d 643, 2 USPQZd 1437 (Fed. Cir. 1987). Facts established by rebuttal evidence must be evaluated along with the facts on which the conclusion of a prima facie case was reached, not against the conclusion itself. In re Eli Lilly, 902 F.2d 943, 14 USPQZd 1741 (Fed. Cir. 1990). In other words, each piece of rebuttal evidence should not be evaluated for its ability to knockdown the prima facie case. All of the competent rebuttal evidence taken as a whole should be weighed against the evidence supporting the prima facie case. In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). Although the record may establish evidence of secondary considerations which are indicia of nonobviousness, the record may also establish such a strong case of obviousness that the objective evidence of nonobviousness is not sufficient to outweigh the evidence of obviousness. Newell Cos. v. Kenney Mfg. Co., 864 F.2d 757, 769, 9 USPQZd 1417, 1427 (Fed. Cir. 1988), cert. denied, 493 U.S. 814 (1989)*, Richardson-vicks, Inc., v. The Upjohn Co., 122 F.3d 1476, 1484, 44 USPQZd 1 181, 1 187 (Fed. Cir. 1997) (showing of unexpected results and commercial success of claimed ibuprofen and psuedoephedrine combination in single tablet form, while supported by substantial evidence, held not to overcome strong prima facie case of obviousness).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER

ThuHa Nguyen
June 11, 2005

Conferees


PATRICE WINDER
PRIMARY EXAMINER

John W. L. Ogilvie
THORPE NORTH & WESTERN, LLP
P.O. Box 1219
Sandy, UT 84091-1219